



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2016-0575; FRL-9960-57-Region 4]

Air Plan Approval; Tennessee: Reasonable Measures Required

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on March 25, 1999. The SIP submittal includes a change to the TDEC regulation “Reasonable Measures Required.” EPA is proposing to approve this SIP revision because it is consistent with the Clean Air Act (CAA or Act) and federal regulations governing SIPs.

DATES: This direct final rule is effective **[insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2016-0575 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may

publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via telephone at (404) 562-9089 and via electronic mail at akers.brad@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 1999, TDEC submitted a change to the Tennessee rules to EPA for approval and incorporation into the Tennessee SIP. Specifically, the submittal includes a change to remove a portion of text from Tennessee Air Pollution Control Regulation (TAPCR) Rule 1200-3-20-.02, “Reasonable Measures Required,” at paragraph (1). Existing paragraph (1) covers measures that air contaminant sources must take during periods of startup and shutdown and the treatment of equipment failures that are not considered to be malfunctions. This

provision was originally submitted by TDEC as part of Chapter 1200-3-20, “Limits on Emissions Due to Malfunctions, Start-ups, and Shutdowns” on February 13, 1979, and approved by EPA on February 6, 1980 (45 FR 8004).¹

II. Analysis of State’s Submittal

The current SIP-approved version of TAPCR 1200-3-20-.02 provides, in part, that for sources that are in or are significantly affecting a nonattainment area, “failures that are caused by poor maintenance, careless operation or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions, and shall be considered in violation of the emission standard exceeded and this rule.” The March 25, 1999, submittal modifies the treatment of those equipment failures that are not considered malfunctions by removing the statement that such failures “shall be considered in violation of the emission standard exceeded and this rule.”² This rule change simply eliminates language indicating that a source which experiences an equipment failure is automatically in violation of applicable emission standards and the Tennessee rule. EPA believes this change is appropriate because an instance of equipment failure does not always result in an exceedance of an emission standard. In addition, EPA notes that, in accordance with TAPCR 1200-3-13-.01, any preventable failure to properly operate control equipment may still be in violation of emission control requirements contained in specific emission standards of the Tennessee SIP.

¹ The current SIP-approved version of paragraph (1) of Chapter 1200-3-20-.02 is the version that became state-effective on February 13, 1977. 40 CFR 52.2220(c).

² The provision at TAPCR 1200-3-20-.02(1) in the March 25, 1999, submittal does not include the phrase “[f]or sources identified in Chapter 1200-3-19, or by a permit condition or an order issued by the Board or by the Technical Secretary as being in or significantly affecting a nonattainment area,” which is currently approved into the SIP. However, EPA is processing only the revision presented in the March 25, 1999, submittal, as discussed in Section II.

This SIP revision does not provide an exemption for any applicable emission standards, nor does it modify any applicable requirements for air contaminant sources. With this change, all applicable emission standards will continue to apply during all times. EPA is approving this revision because it is consistent with the CAA.

III. Start up, Shutdown, and Malfunction (SSM) SIP Call Considerations

In this action, EPA is not approving or disapproving revisions to any existing pollutant emission limitations that apply during periods of startup, shutdown and malfunction. EPA notes that on June 12, 2015, the Agency published a formal finding that a number of states, including Tennessee, have SIPs with SSM provisions that are contrary to the CAA and existing EPA guidance. *See* 80 FR 33840. Accordingly, EPA issued a formal “SIP call” requiring the affected states to make a SIP submission to correct the SSM regulations identified by EPA as being deficient. *Id.* In that final action, EPA determined that TAPCR Chapters 1200-3-20 and 1200-3-5 have provisions that are contrary to the CAA, specifically TAPCR 1200-3-20-.07(1), 1200-3-20-.07(3) and 1200-3-5-.02(1). This direct final action only removes language from 1200-3-20-.02(1) indicating that an equipment failure that does not qualify as a malfunction is an automatic violation. Therefore, this final action does not impact the provisions of the Tennessee regulations implicated in the SSM SIP call and has no effect on EPA’s June 12, 2015, finding of inadequacy regarding Tennessee’s SIP.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of TAPCR 1200-3-20-.02(1), entitled “Reasonable Measures Required,” effective November 11,

1997, which removed a statement that preventable failures of process or control equipment were presumptively in violation of applicable emission standards and the rule. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.³ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. Final Action

EPA is approving a change to the Tennessee SIP at TAPCR 1200-3-20-.02, submitted March 25, 1999, because it is consistent with the CAA and federal regulations. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless the Agency receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received

³ 62 FR 27968 (May 22, 1997).

will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[insert date 60 days after date of publication in the Federal Register]** and no further action will be taken on the proposed rule.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business

Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: March 15, 2017.

V. Anne Heard,

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

2. In §52.2220, table 1 in paragraph (c) is amended by revising the entry for “1200-3-20-.02” to read as follows:

§52.2220 Identification of plan.

* * * *

(c) * * *

Table 1—EPA Approved Tennessee Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	* *	*	*	*
CHAPTER 1200-3-20 LIMITS ON EMISSIONS DUE TO MALFUNCTIONS, START-UPS, AND SHUTDOWNS				
* *	* *	*	*	*
1200-3-20-.02	Reasonable Measures Required	11/11/1997	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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[FR Doc. 2017-06877 Filed: 4/6/2017 8:45 am; Publication Date: 4/7/2017]